

Excerpt from: "International Law by L. Oppenheim", Vol. I

DIPLOMATIC ENVOYS

XIII

Diplomatic privileges of Non-Diplomatic persons

417a. In addition to the diplomatic persons upon whom customary International Law confers certain immunities and privileges, there are several classes of officials whom States have agreed by treaty to invest with the same, or at any rate a similar, status. These persons may be classified as (a) international officials, and (b) certain national officials and agents of a miscellaneous character.

(a) International officials. - Among these may be mentioned -

(i) The United Nations and its Officials.

The Charter of the United Nations lays down, in Article 105, that officials of the Organisation - as well as representatives of the Members of the United Nations - shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation. The details of these privileges and immunities are left for determination as the result of recommendations of the Assembly or of special conventions made with the Members of the United Nations. Unlike the corresponding Article 7 of the Covenant of the League, the Charter does not refer to diplomatic privileges and immunities. The probable reason of that change was the intention to leave room for a substantial measure of elasticity suggested by the experience of the League. The First General Assembly approved, in February 1946, a convention on the privileges and immunities of the United Nations and proposed it for accession by each member of the United Nations. The Convention embodies details provisions concerning the juridical personality of the United Nations; the immunity and inviolability of its property, its premises, and its archives; exemption from taxation and customs duties, facilities in respect of communications, and various jurisdictional and other immunities and privileges for the representatives of Members of the United Nations, and its officials and experts on missions for the United Nations.

(ii) The Judges of the International Court of Justice, who by Article 19 of the Statute of the Court when engaged on the business of the Court shall enjoy diplomatic privileges and immunities. The diplomatic privileges of the members of the Permanent Court of International Justice and the Registrar were regulated in detail in an exchange of notes between the President of the Court and the Dutch Government on May 22, 1928. The latter agreed that the judges and the Registrar, if not of Dutch nationality, should be granted the diplomatic privileges and immunities accorded to heads of missions accredited at The Hague. If the persons in question are of Dutch nationality, they are accorded immunity in regard to their official acts; they are also exempted from direct taxation on their official income. The Statute as revised in 1945 leaves the wording of Article 19 unchanged - an indication that the privileges and immunities of the Judges of the Court may be wider than those of the officials of the United Nations.

(iii) International Organisations and their Officials.

The constitutions of various international organisations set up since the Second World War contain provisions claiming and regulating immunities for themselves and their officials. In Great Britain, the Diplomatic Privileges (Extension) Act, 1944, gives His Majesty in Council the power to confer various immunities and privileges, laid down in the Act, upon international organisations of which the Government of the United Kingdom and foreign Governments are members. The Act enumerates the maximum of such privileges and immunities and leave it to an Order in Council to apply its provisions to the several international organisations. According to the Act and subject to the Order in Council to be issued in any specific case, such organisations may be given the legal capacities of a body corporate in respect of holding property, concluding contracts and suing in courts; they may be granted immunity from suit and their archives and property may be made inviolable; the representatives of foreign Governments on its governing body and a limited number of its higher officials may be granted diplomatic immunity - a provision which, since the Diplomatic Privileges (Extension) Act, 1946, applies also to British subjects. Certain other classes of their officials, whether British subjects or not, may be granted exemption from income tax in respect of their official salaries. By Orders in Council these provisions were made applicable, in 1945, to the United Nations Relief and Rehabilitation Administration and to the United Nations Information Office, the Intergovernmental Committee for Refugees, and the European Advisory Commission. In 1945 the United States Congress approved an Act to extend certain privileges, exemptions and immunities to international organisations and their officers and employees. In 1946 a similar Act was passed in Great Britain, in connection with the general convention on privileges and immunities of the United Nations approved at the First General Assembly. The general effect of the Act of 1946 is to extend to the United Nations and the International Court of Justice the privileges as laid down in the Act of 1944.

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辯護側文書二八二六

エル・ネツベンハイム著「国際法」第一巻よりの抜萃

外交使節

十三

非外交官の特權

四一七△

慣行の国際法により一定の免除と特權とを與えられている外交官の外にそれと同一若しくは少くとも同様の身分を賦與することを各國が條約によつて協定した故種の官吏がいる。これ等の人々は左の如く分類される

(A) 國際的官吏

(B) 維多の責務を有する一定の國家官吏及び代理人

(A) 國際官吏 一 この中に次のものがある。

(1) 國際連合及其の役員

國際憲章第一〇五條に國際加入國の代表と同様國際連合の役員は國際連合に關しその職務を自由に遂行するに必要な特權及び免除を有している旨規定してある。この特權及び免除の詳細は國際連合の會章乃至その特別會章より國際加入國に對する提言の請求としてその決定が爲さるる事になつてゐる。本條に該當する國際規約第七條とは異り、國際憲章は外交上の特權及び免除を指示してゐない。かくの如き變化を見たのは、恐らく聯盟の憲章によつて相當程度の融通性を殘して置く意圖からであらう。一九四六年二月第一回國際連合會議は國際連合の特權及び免除に關する取り返めを承認し各加入國の承諾を求めた。本取り返めによつて具體化された詳細な規定は國際連合の法的性格その財產土地建物文書の免除及び不可侵性、國際加入國の代表者及び國際連合の役員及び國際連合に派遣される專門家に對する租税及び國稅の免除通信上の便宜、及び種々の司法上其他の免除及び特權に關するものである。

(2) 國際裁判所の判事

これ等は國際裁判所法第十九條により國際裁判所の業務に従事中は外交上の特

及び免除を有する。常設國際裁判所の列下及び記録係の外交上の特權
日一九二八年五月二十二日該裁判所の所長とオランダ政府との間に取り
交わされた覚書の中で詳細に規定された。オランダ政府はこれ等列下及び
記録係にはオランダの國籍を有せずとも、ヘーグに設置された各國使節
の首席に與えよるる外交上の特權及び免除を以てすることゝ承諾した
石の者がオランダの國籍を有する場合は職務上の行爲に對して免除を與
えられ又職務上の收入に對する直税の課税を免除される。一九四五年改
正された裁判所法は第十九條の語句を變更していないが、これは裁判所
の列下の特權及び免除は國籍の役員のものよりは廣範圍のものであるこ
とを示す證據である。

目國際機構及その役員

第二次世界大戰以來設立された種々の國際機構の實法の中には、種々
のもの及びその役員に對する免除を要求し且つ制定する規定が含まれて
いる。英國に於ては一九四四年の外交特權一賦與一法は英國政府及び外國
政府が加入せる國際機構に對し本法に規定されている種々の免除及び特
權を以てする特權を該機關に與えている。
本法はかかる特權及び免除の最大限を定めその規定の各國國際機構への適

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目録 裁判所及びその役員

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 権を賦與する權限を議會院に與えている。
 本法はかかる特権及び免除の最大限を越げその規定の各国際機構への適

用は憲密院令に依つて爲さるることとしている。本法に依り、又特別の場合に發せられる勅令に従つてかかる職務は附屬の保有契約の締結、裁判所への訴訟提起に關し法人團體としての法律上の資格を賦與される又訴訟免除を與へられその文書及び附屬は侵奪されずその統理機關への外閣政府代表及びその統理機關の一定数の高級役員は外交上の免除を賦與される。この規定は一九四六年の外交特權（賦與）法發布以來英國臣民にも適用されている。

その他の階級の役員も英國臣民たると否とを問はず職務上の締結について所得税の免除を受ける一九四五年憲密院令によつてこれ等の規定は閣下救済委員會議、連署局、國際連盟委員會、歐洲委員會に適用されることになつた。一九四五年米國委員會は國際機構及びその役員從業員に關する程度の保護、免狀及び免除を與ふる法律を承認した。第一回「連盟會」に於いて承認された國際の特權及び免除に關する一讀即取り極めにして一九四六年同様の法律が英國において通過した。一九四六年の法律の大体の趣旨は一九四四年の法律に規定されている特權を國際及び國際裁判所にも及ぼす點にある。